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D/ICS-85-7612
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MEMORANDUM FOR: OLL/CIA

FROM:

Chief, Community Counterintelligence Staff/IC Staff

SUBJECT: H.R. 1082, The Omnibus Intelligence and Security
Improvements ActREFERENCE: Letter from Bob Stump to Mr. McFarlane
dated 8 February 1985

1. CCIS/ICS was requested to reviewed the referenced legislation and makes the following comments.

2. Title II contains the provision that a defendant in a court action must, if he plans to claim that his alleged criminal activities were conducted or were believed by him to have been conducted for, on behalf of, or authorized by a Federal law enforcement or intelligence agency, give prior notice to the court that he will use such a claim in his own defense. There may be a constitutional problem with this provision of the Act since to require such advance notice of use of this "color of right" claim as a defense is to force an admission that he performed the act or took part in the offense prior to being placed on trial for the offense. It would amount to a plea of "guilty with an explanation." To require such a notice to the court prior to trial seems to have the effect of denying the defendant his day in court. His right to trial should supersede any convenience to the Government which might inure from the advance notice requirement in Title II. Should the defendant's own defense not be consistent with such an admission, passage of this Title of the Act could place the defendant in a position of having to violate one law in order to establish his innocence to another accusation.

3. Title III: Sec. 302(5)(A) calls for an amendment to the Right of Financial Privacy Act of 1978 (12 U.S.C. 3414) which would mandate that financial institutions, their officers, employees, and agents comply with requests from the FBI for financial records when such requests have been approved by the Attorney General or his designee for foreign counterintelligence purposes. CCIS suggests that this section be further amended to include, in addition to the FBI, those components of the military services which conduct foreign counterintelligence investigations. CCIS would also suggest an additional provision, to be labeled (5)(C) which would impose sanctions on the financial institutions designed to discourage their disclosure of FBI or military counterintelligence interest in the institution's records. The wording of such a paragraph could be adapted from Title IV, Section 402(a) of this proposed legislation.

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4. Title VII: CCIS takes issue with the limitation on the number of persons the President is allowed to naturalize in a given year. An especially successful period in the Intelligence Community might be hampered by the limitation on the number of naturalizations which the President might grant. Title VII might be more effective if the numerical limitations were removed and replaced by a review procedure which would, by its nature, require careful selection of the recipients of US citizenship under the Act.

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CCIS/ICS: [redacted] dm f [redacted]

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